

Service Date: March 1, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Petition of)	TRANSPORTATION DIVISION
Burlington Northern Railroad)	
Company to Discontinue Agency)	DOCKET NO. T-93.117.RR
Services at Harlem, Montana.)	ORDER NO. 6283

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Jon Metropoulos, Browning, Kaleczyc, Berry & Hoven, 139 Last
Chance Gulch, P.O. Box 1697, Helena, Montana 59624

FOR THE COMMISSION:

Tim Sweeney, Staff Attorney, 1701 Prospect Avenue, P.O. Box
202601, Helena, Montana 59620-2601

Wayne Budt, Transportation Division, 1701 Prospect Avenue,
P.O. Box 202601, Helena, Montana 59620-2601

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

BACKGROUND

1. Burlington Northern Railroad Company (BNRC or Applicant) applied to the Montana Public Service Commission (Commission) on August 19, 1993 for authority to discontinue agency

services at Harlem, Montana.

2. The Commission properly noticed BNRC's application and held a public hearing on November 5, 1993 at the City Council Chambers, 10 First Avenue South, Harlem, Montana.

3. BNRC stipulated to a final order and no briefs were filed.

SUMMARY OF TESTIMONY

Testimony of Applicant

4. Tom Zack, BNRC's Manager of Customer Service in Great Falls, testified on the operations of a central agency. He indicated that the Great Falls Central Agency currently serves the Harlem area and is responsible for car orders, car releasing, billing, and other functions including car problems. He also noted that shippers can communicate with the central agency using telephones, facsimile transmissions and computer links.

5. Mr. Zack presented copies of questionnaires that were sent by BNRC to Harlem-area shippers. The responses indicated that the level of satisfaction with service provided by the Great Falls Central Agency ranged from "very well" to "well." None of the shippers indicated that service was adequate or poor.

6. Based on his knowledge and experience, Mr. Zack con-

cluded that the Harlem Agency was not necessary to serve the shipping public's needs.

7. Steven Boespflug, BNRC's trainmaster for the area covering Havre to Glasgow, testified on the train operations serving Harlem. He indicated that train crews perform a number of customer-related services previously provided by the station agent. He also testified that he personally contacts all the shippers and often has weekly contact with some. He concluded that the station agent was no longer needed to serve the shipping public since the train crews and the Great Falls Central Agency are able to provide all the necessary customer services.

8. Paul Froelich, Senior Cost Analyst for BNRC, testified on the Accounting Exhibit prepared and submitted to the Commission prior to the hearing. Pages 1-4 of the Exhibit, a computer generated report on carload commodity and traffic statistics for the years 1990 through 1993 (January-June), showed that cars forwarded and received at Harlem totaled 1,027 in 1990, 757 in 1991, 827 in 1992, and 747 in 1993 (January-June). Pages 3-4 also presented these statistics in terms of average cars per month and per day. Page 5 presented a time study based on the number of units handled by the agency. Revenues and expenses were analyzed on pages 6-7.

9. The data on page 6 indicated that net revenue for freight service at Harlem was \$317,716 in 1990, \$208,844 in 1991, \$281,500 in 1992, and \$263,890 during the first six months of 1993. On cross-examination Mr. Froelich confirmed that the Harlem agency was profitable.

Testimony of Public Witnesses

10. Senator Greg Jergeson, Senate District 8, testified in opposition to the application. He pointed out that BNRC's previous application to reduce Harlem Agency services was denied, and that if the arguments presented at the last hearing were valid then they should still be valid today. He also expressed concern about the economic impact of discontinuing agency services.

11. Mr. Keith Benson, Blaine County Commissioner, testified that BNRC had answered all his concerns. He also indicated that he was not aware of any safety problems related to the proposed closure.

12. Mr. James T. Mular, State Legislative Director for the Transportation and Communications Union, testified in opposition to the application. He argued that BNRC had acted illegally by effectively transferring Harlem Agency duties to the Great Falls

Central Agency prior to the filing of its application with the Commission. Mr. Mular also presented a BNRC Compass Points announcement (dated July 20, 1992) indicating that all agency functions would eventually be transferred to a facility in Fort Worth, Texas.

DISCUSSION, FURTHER FINDINGS AND ANALYSIS

13. Under Section 69-14-202(1), MCA, a railroad operating in the state of Montana shall maintain such agency facilities for shipping, freight delivery and accommodation of passengers as were maintained and staffed on January 1, 1987. However, if the railroad demonstrates to the Commission, following an opportunity for public hearing, that a facility is not required for the public convenience and necessity, then the Commission shall authorize the closure of such facility. Section 69-14-202(2), MCA.

14. In determining public convenience and necessity, the Commission must weigh and balance facts and testimony presented at the hearing including facts and testimony presented by the general public. Id. The Commission shall also consider the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the Commission considers significant to the provi-

sion of adequate rail service. Id.

15. The Commission notes that BNRC's application seeks to discontinue agency services at Harlem and transfer such services to its Great Falls Central Agency. The application does not seek to close the depot facility. Therefore, the Commission now considers only whether BNRC should be allowed to discontinue and transfer agency services. BNRC cannot close the depot facility without Commission approval, and such approval would have to be the subject of a separate application.

16. BNRC's application contends that the Great Falls Central Agency is fully capable of meeting shipper needs and, therefore, the Harlem Agency is no longer needed. BNRC's witnesses supported this contention and, notably, no shipper testified in opposition to BNRC application.

17. The only witnesses to oppose BNRC's application were Jim Mular of the Transportation and Communications Union and Senator Jergeson. Mr. Mular's contention that BNRC had effectively transferred agency services to Great Falls prior to filing the instant application is well taken and the Commission has already indicated its intent to address this problem. See In The Matter of the Petition of Burlington Northern Railroad Company to Discontinue Agency Services at Glasgow, Montana, Docket No. T-

93.115.RR, Order No. 6277 (Service Date February 4, 1994).

Nonetheless, Mr. Mular did not present any evidence that the public convenience and necessity would be compromised by discontinuing Harlem Agency services.

18. Senator Jergeson argued that the reasoning used to deny BNRC's previous request to reduce Harlem Agency services should apply with equal force in this case. In 1982 BNRC applied to the Commission for permission to dualize agency operations between Chinook and Harlem. The application, which would have allowed service to Harlem on an "as-needed" basis, was denied in large part because of the testimony of an affected shipper. See In The Matter of the Application of Burlington Northern Railroad

Company for Authority to Dualize Agency Operations at Harlem and Chinook, Montana, Docket No. T-7403, Order No. 4810 (Service Date May 3, 1984). Unlike that case, however, no shippers appeared to oppose the instant application. In the absence of such opposition it is difficult for the Commission to conclude that the public convenience and necessity require that BNRC continue to offer Harlem Agency services.

19. While § 69-14-202, MCA, does allow the Commission to consider factors other than shipper need, there simply was no testimony identifying extenuating factors or circumstances that

would warrant denial of the application. Therefore, absent a showing that public convenience and necessity require Harlem Agency services, the application is hereby granted.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

3. The Harlem Agency is not required to serve the public convenience and necessity as defined by § 69-14-202, MCA.

4. The Commission shall require employee protection before granting an application to discontinue agency services. Section 69-14-1001, MCA.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application to close the agency at Harlem, Montana is Granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad

Company shall provide employee protection.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this Docket that were not ruled on are denied.

Done and Dated this 2nd day of February, 1994 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.